IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1758 OF 2005
IN
FIRST APPEAL STAMP NO.21670 OF 2004

Director of Enforcement .. Applicant.
Vs.
M/s.Retreat Trading
Pvt. Ltd. .. Respondent.

Mr.A.H.Bhatija with Mr.N.V.Masurkar with
Mr.Y.R.Mishra with Mr.D.A.Dube for the applicant.

Mr.Arif S.Doctor i/b M/s.Desai & Diwanji for the respondent.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, J.

DATED : 24TH JANUARY, 2006.

P.C.:

. The Director of Enforcement has filed this civil application praying that delay of 55 days be condoned in filing first appeal against the judgment and order dated 18.3.2004 passed by the Appellate Tribunal for Foreign Exchange, New Delhi.

2. We have heard learned counsel for the parties. The learned counsel for the respondent has strenuously opposed the grant of this application. He pointed out that in the earlier civil application there were certain blanks and proper explanation was not offerred and, therefore,

by its order dated 19th December, 2005 the Division Bench of this Court directed the applicant to file additional affidavit explaining all the details giving particulars relating to delay in filing the first appeal. The Division Bench also ordered that the applicant shall explain as to why civil application for condonation of delay was taken out after lapse of a period of one or two years after lodging of the appeal. The learned counsel pointed out that though additional affidavit is filed the applicant has not given proper explanation as to why the application for condonation of delay was filed after lapse of a period of one or two years after lodging of the appeal. He further pointed out that the alleged violation of the Foreign Exchange Regulation Act is of the year 1978. The show cause notice was issued on 29th August, 1986. The order was passed by the Special Director of Enforcement on 30th September, 1998 and it was communicated to the respondent. The respondent filed appeal in May 1999. The appeal was admitted on 22nd January, 2003 and was disposed of on 18.3.2004. Thereafter after the lapse of 58 days the present appeal came to be filed. He further submitted that considering the above facts and the fact that though by the order dated 19.12.2005 this Court had directed the applicant to offer proper

explanation, no proper explanation is given by the applicant this court should show no leniency and application should be dismissed.

3. The learned counsel for the respondent on the other hand submitted that the appeal was not filed in time because on account of wrong advice instead of preferring separate appeals draft of one appeal was prepared. He submitted that the applicant may not be made to suffer because of this. He drew our attention to the additional affidavit and submitted that proper explanation is offerred. He relied on the judgment reported in **State of Nagaland Vs. Lipok AO and Others 2005 AIR SCW 1748** and submitted that Government and private parties cannot be put on same footing and in the facts and circumstances of this case the Court should show some latitude and condone the delay.

4. It is an admitted position in the present civil application and companion civil applications there were blanks and when the objection was raised by the learned counsel for the respondent, the blanks came to be filed in. Thereafter because the explanation offerred was not satisfactory the Division Bench of this Court on 19th December, 2005 directed the applicant to file additional affidavit

giving proper explanation. The additional affidavit came to be filed, however, in the additional affidavit also no satisfactory explanation has been given. Ordinarily we would not have condoned the delay but, in our opinion, since violation of the provisions of Foreign Exchange Regulation Act are alleged against the respondent and the Special Director has by his order dated 30th September, 1998 held against the respondent, in our opinion, in the facts and circumstances of the case the delay will have to be condoned. However, the applicant will have to be saddled with costs. We must note that learned counsel for the applicant strenuously opposed imposing of costs on the applicant. We, however, feel it necessary to do so considering the fact that initially there were blanks in the applications and the Division Bench had to direct the applicant to file additional affidavit. The applicant has shown very careless and negligent approach for which it must be saddled with costs. Hence delay is condoned on the applicant paying costs quantified at Rs.500/- to the Maharashtra State Legal Services Authority within period of four weeks from today. We make it clear that payment of costs is condition precedent for condonation of delay. Civil application is

disposed of.

(D.B.Bhosale, J.) **(Smt.Ranjana Desai, J.)**